PATENT
Customer No. 22,852
Attorney Docket No. 05725.1213-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
Nadia GARDEL et al.	Group Art Unit: 1617
Application No.: 10/603,698	Examiner: L.M. Williams
Filed: June 26, 2003	
For: WATER-IN-EMULSION FOUNDATION	Confirmation No.: 8001

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

Further to the Office Action dated July 3, 2006, the period for reply having been extended to October 3, 2006, by the accompanying petition and fee, please examine this application in view of the following remarks:

I. Status of Claims

Claims 1-99 are pending in this application. No claims have been added or amended by this Response.

II. Restriction Requirement

In the Office Action, Examiner required restriction under 35 U.S.C. § 121 between the following groups of claims:

I. Claims 1-12, 18-95 and 99, drawn to a foundation in the form of a water-oil emulsion (formula I);

II. Claims 1, 13-15, 18-95 and 99, drawn to a foundation in the form of a water-oil emulsion (formula II);

III. Claims 1, 16, 18-95, drawn to a foundation in the form of a water-oil emulsion (formula III);

IV. Claims 1, 17-95 and 99, drawn to a foundation in the form of a water-oil emulsion (formula IV);

V. Claim 96, drawn to a cosmetic process; and

VI. Claims 97-98, drawn to a process of making a foundation composition.

Applicants respectfully traverse the restriction requirement. To be fully responsive, however, to the restriction requirement, Applicants elect, with traverse, Group IV, Claims 1, 17-95 and 99.

The Examiner contends that groups I-IV are unrelated because "the different inventions are drawn to differing compounds chosen from formulas I-IV." *Office Action*, page 2. In addition, the Examiner asserts that groups I-IV and V and I-V and VI are "related as products and process of use" but the inventions are distinct because the process of making up the skin or making a cosmetic can be accomplished in a variety of ways. *Id.*, pages 3-4. Moreover, the Examiner contends that the claimed dimethicone copolyols can be used in non-cosmetic formulations. *Id.* The Examiner then concludes that Groups I-VI relate to distinct inventions. *Id.* Applicants disagree with all of the Examiner's Statements.

Applicants respectfully refer the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P instructs the Examiner as follows:

> If the search and examination of an entire application can be made **without serious burden**, the Office **must** examine it on the merits, even though it includes claims to independent or distinct inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining Groups I-VI together would constitute a serious burden. In particular, Applicants respectfully submit that examining a foundation composition and a process of using or making a foundation composition would not impose a serious burden on the Examiner, because all the claims belong to the same class and some even to the same subclass. Additionally, Applicants submit no serious burden would exist in light of the requirement of rejoinder. *See* M.P.E.P. § 821.04. Accordingly, it is unclear what burden is on the Examiner to examine all six groups together, and Applicants respectfully request withdrawal of the restriction requirement.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 3, 2006

By: Mareesa A. Frederick
Mareesa A. Frederick
Reg. No. 55,190